

REMARKS

Claims 31-55 are pending in the application and were subjected to a restriction requirement in the Office Action mailed March 23, 2004. In particular, the Examiner has required restriction of the invention to one of the following groups:

Group I, claims 31-39, drawn to a floor covering material; and

Group II, claims 40-55, drawn to a method of producing a floor covering material.

Applicants provisionally elect to pursue the claims of Group I, but traverse the restriction requirement on the following grounds:

In the previous amendment, submitted October 15, 2003, Applicants submitted new claims 31-55 with the express purpose of provoking an interference with issued U.S. Pat. No. 6,579,610. Claims 31-55 are copied directly from that patent. The fact that claims 31-55 have already issued in a single U.S. patent is *prima facie* evidence that the claims should not be subject to a restriction requirement. Therefore, because both groups of claims have already issued in the '610 patent, the restriction requirement is traversed.

Moreover, the Office Action states that "Claim 31 is either obvious over or anticipated by US 5,965,198." This is directly contradicted by the fact that claim 31 issued in the '610 patent, that the '198 patent is listed on the face of the '610 patent as prior art cited by the examiner, and that the present application has an earlier priority date than the '610 patent. Thus, if claim 31 is unpatentable over the '198 patent, then the '610 patent must be invalid. Alternatively, if the '610 patent is entitled to a presumption of validity, then claim 31 of the present application is presumptively patentable over the '198 patent. Thus, because the restriction requirement appears to have been based upon an incorrect conclusion as to the patentability of claim 31, the restriction requirement is traversed.

Finally, the Examiner suggests that the "special technical feature linking the two inventions [is] a floor covering with a PVC material." Respectfully, this is not correct. The claims are clearly directed to floor covering materials having (a) a *PVC base layer*, (b) a *barrier layer* of polymeric material *other than PVC* fused into the upper surface of the PVC, and (c) an *aggregate material* embedded in the PVC layer and exposed at the surface of the barrier layer. Thus, because the restriction requirement appears to have been based upon a misunderstanding of the invention, the restriction requirement is traversed.

Appln. No. 09/807,167
Response dated August 23, 2004
Reply to Office Action of March 23, 2004

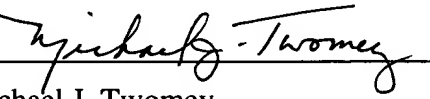
SUMMARY

Claims 31-55 were pending in the application. Claims 31-55 were subjected to a restriction requirement. Applicants provisionally elect the claims of Group I, but strenuously traverse the restriction requirement for the reasons stated above.

Applicant requests that the Examiner reconsider the application and claims in light of the foregoing Remarks, and respectfully submits that the claims are in condition for allowance, but for the necessity of an interference with the '610 patent. If, in the Examiner's opinion, a telephonic interview would expedite the favorable prosecution of the present application, the undersigned attorney would welcome the opportunity to discuss any outstanding issues, and to work with the Examiner toward placing the application in condition for allowance.

A petition for a 4-month Extension of Time for Response to the Office Action of March 23, 2004, is submitted herewith. The Commissioner is hereby authorized to charge the fee for the 4-month Extension of Time for Response, and any other fees now required to maintain the pendency of the application, to Deposit Account No. 08-0219.

Respectfully submitted,
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